IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2122 OF 2005.

Gajadhar Baiju Kori. ... Petitioner.

Versus.

Sushila Gajadhar Kori & another. ... Respondents.

Shri S.D.Thokade for the Petitioner.

Shri S.S.Bhise for the Respondent No.1.

Ms.M.M.Deshmukh, A.P.P. for the Respondent-State.

CORAM : ABHAY S.OKA, J.

DATED : 19th September, 2006.

P.C.:

1. Heard the learned Advocates appearing for the parties. Amicable settlement is not possible. Hence, taken up for hearing. The Petitioner has taken exception to the order passed under section 125 of the Code of Criminal Procedure, 1973 by which maintenance has been awarded at the rate of Rs.1000/- per month in favour of the 1st Respondent. The said order has been confirmed in Revision.

2. Shri Thokade appearing for the Petitioner pointed out that there is no legal and valid marriage solemnized between the Petitioner and the 1st Respondent. He submitted that this was a case where absolutely no evidence was led by the 1st Respondent to prove the existence of marriage. He submitted that the Petitioner is happily married with another lady. He submitted that the findings recorded by the Courts below

as regards the alleged marriage between the Petitioner and the 1st Respondent are perverse.

3. I have considered the submissions. It is well settled position of law that the remedy under section 125 of the said Code is summary in nature introduced with a view to ensure that maintenance is expeditiously paid to the wife. The findings recorded while passing the order under section 125 of the said Code including the finding regarding the existence of marriage are always prima-facie findings and the said findings are subject to adjudication on the issue by the competent Civil Court.

4. In the present case the Courts below have taken into account various circumstances for coming to a prima-facie finding regarding the existence of valid marriage between the Petitioner and the 1st Respondent. The Sessions Court has referred to the oral evidence of the 1st Respondent in which he has stated that the marriage has taken place in Hanuman Temple. The learned Sessions Judge has also relied upon the evidence of Dr.Gajanan R.Bhate who has deposed that both the Petitioner and the 1st Respondent were coming to him for medical treatment regularly and they were coming to him as husband and wife. The Courts below have also referred to the documentary evidence on record and the reply filed by the Petitioner. I find no error with the

view taken by the Courts below. There is no case for interference.

5. Shri Thokade appearing for the Petitioner submitted that confirmation of the findings of the Courts below will prevent the Petitioner from filing a civil suit for declaration. As stated earlier, the order is passed under section 125 of the said Code on prima-facie consideration of the material on record and the said order is always subject to adjudication made by the Civil Court in appropriate proceedings.

6. Subject to what is stated above, the petition is rejected.

Judge.